

## **Article 10**

### **DISCIPLINARY ACTION**

#### **Section A. General.**

The Union recognizes the authority and responsibility of the Employer to take timely, and reasonable disciplinary action against employees for just cause. Discipline will normally be progressive in nature; however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation. For purposes of this Article, disciplinary action, or investigation to determine whether disciplinary action should be taken, is timely only when commenced within 21 calendar days following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken. Disciplinary action includes: written reprimand; involuntary demotions; suspension without pay; forfeiture of accrued annual leave in lieu of suspension; payment of fines in lieu of suspension; unsatisfactory or follow-up interim rating and discharge. The suspension without pay of a probationary employee during or at the end of the pay period in which the initial probationary period expires, pending separation for unsatisfactory service, as well as the separation itself in such circumstances, shall not be considered disciplinary action for purposes of this Article.

A demotion will not be considered disciplinary action if it is a result of the employee failing to satisfactorily complete a required probationary period upon promotion or transfer; in conjunction with the layoff or "bump" of the employee; or the voluntary or contractually required transfer or reassignment of the employee to a position allocated at a lower level, if voluntary, or required by Civil Service merit-based rules, or this contract, if unaccompanied by disciplinary action of some other kind.

Placing an employee on "lost time" (leave without pay) for the period of an employee's unauthorized absence from work shall not be considered disciplinary action. However, if the employee has requested authorization to use accrued leave credits for such time and it is denied, the denial shall not be exempt from the scope of the grievance procedure solely on the basis that the denial is not disciplinary action.

The decision whether to offer an employee the option to forfeit accrued annual leave, or assess the suspension, shall be in the sole discretion of the Employer, and is not grievable.

Just cause for disciplinary action will include, but not be limited to:

- a. Failure to carry out assigned duties and responsibilities required by the Employer;
- b. Conduct unbecoming a state employee;
- c. Unsatisfactory service;
- d. Violation of Employer work rules, policies, regulations or directives pertaining to performance, conduct or safety.

### **Section B. Investigation.**

The parties agree that disciplinary action must be supported by timely and accurate investigation, but investigations shall not be unduly prolonged. The Employer has the right to receive prompt, accurate and truthful answers to questions put to the employee concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty. The employee shall be afforded 24 hours to respond without undue delay from the time he/she receives the written questionnaire or request for written statement. This 24-hour period does not apply to the requirement to submit a critical incident report.

1. Union Representation. Bargaining Unit members are entitled to be accompanied by the designated Union Representative for his/her work area, or other individual approved by the MCO Central Office in any of the following:
  - a. In any disciplinary conference conducted pursuant to Section D. below.
  - b. When the employee's own conduct is the direct object of the investigation, the employee shall have the opportunity to confer with a Union Representative, before submitting a written statement or questionnaire. The employee shall have 24 hours to submit his/her response. This 24-hour period does not apply to the requirement to submit a critical incident report.
  - c. In any investigatory interview, where the employee is the subject of the investigation, the Employer shall advise the employee of his/her right to a Union Representative. The employee may request a Union Representative at any time subsequent to being advised of this right.
  - d. During the course of any other investigatory interview, if it is determined that the employee being interviewed could become the subject of an investigation, the interview will be stopped and the employee will be offered the opportunity to obtain representation before the interview is continued.

- e. In addition to the above, employees may request Union representation in any investigatory interview where:
  - i. The investigatory interview is recorded, videotaped, or a verbatim transcribed record of the interview is created by the Employer; or
  - ii. The employee has been suspended or removed from the work premises pursuant to Section C. below; or
  - iii. The employee has been suspended (with or without pay), or reassigned from the employee's regular job assignment; or
  - iv. The employee has been specifically charged in writing with one or more instances of misconduct; or
  - v. The employee is directed to report on his/her own conduct (as a principal in an investigation) to a patient or resident abuse committee or Fact Finder. If the employee is called as a witness during the course of the investigatory interview, and it is determined that the employee being interviewed could become the subject of an investigation, the interview will be stopped and the employee will be offered the opportunity to obtain representation before the interview is continued; or
  - vi. The interview is attended by more than one supervisor or Employer Representative, and the employee is not represented by a Union Staff Representative (in the event that a Staff Representative is to attend, the Employer shall be given as much advance notice as possible).

It shall be the responsibility of the Employer, upon the employee's request, to secure the release of the local chapter Union Representative.

When an employee is entitled to be accompanied by the Union Representative at a conference under this Article, the employee and the designated Union Representative may be allowed time, not to exceed one-half hour, immediately prior and contiguous to the scheduled conference, to permit them to confer about the subject matter of the conference. Such time shall be without loss of pay. Such one-half hour conference time shall not be required unless requested by the employee or the Union Representative, nor shall it be required if the amount of time elapsed between the time the employee received notice of the conference and the start of the conference is 48 hours or more.

2. Role of the Union Representative. Union Representatives in attendance at such interviews or conferences shall be:

- a. Informed of the subject of the meeting,
- b. Allowed to clarify or object to confusing questions,
- c. Allowed to provide information to support the employee's case,
- d. Allowed to assist the employee in presenting his/her evidence and/or argument, and pointing out other relevant matters. The Employer may, however, insist upon communicating directly to and with the employee regarding the matters under discussion during the conference or interview.

None of the above is intended to circumvent the normal relationship between the supervisor and employee as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an employee and the supervisor for the purpose of giving instruction concerning work performance, providing training or retraining, or correction of work habits or techniques.

3. Questionnaires and Interviews.

a. Written Questionnaire.

- i. When a written statement of any kind is requested from an employee, the employee shall be given the request in writing and the employee shall to the best of his/her ability provide an accurate and truthful written statement on the matter being investigated, including answers to any specific questions included in the request.
- ii. The employee shall be given a copy of the questionnaire and, if available, sign for its receipt.
- iii. The questionnaire shall contain questions pertaining to the incident under investigation. [Note: When a critical or unusual incident report is required, the employee may be required to provide a narrative statement regarding the incident without the necessity of specific written questions. Such report shall be provided promptly and accurately to the best of the employee's ability.]
- iv. The employee shall be afforded a reasonable time to respond without undue delay.

- v. A copy of the written response shall be provided to the employee who shall have 24 hours to review, amend, change or correct said statement.

b. Oral Interview.

- i. At the conclusion of the interview, the employee shall have the opportunity to review the questions and answers documented by the investigator.
  - ii. Once reviewed, the employee shall have the right to place his/her initials on each page of the recorded answer or summary to affirm its accuracy.
  - iii. If the employee finds that a recorded answer is inaccurate or incomplete and the record is not modified by the investigator, the employee shall be allowed to provide a written response to the specific question of concern.
  - iv. The employee will be given a copy of the final interview document and have 24 hours to amend his/her answers by providing a written response to the specific question(s) he/she is amending.
  - v. If the interview is electronically recorded, the employee shall be provided a copy of the recording or verbatim transcript when it becomes available, and shall then have 24 hours to submit a statement amending his/her statements reflected in the record of the interview.
- c. Any such statement amending responses to Employer questions shall, if timely filed, become part of the record of the interview to the extent it pertains to the subject matter of the interview, and the original statement shall not be considered or used until the time period for submitting amendments has elapsed.

4. Patient/Resident Abuse Committee or Fact Finding. Where, as a principal in an investigation, an employee is directed to report on his/her own conduct to a patient or resident abuse committee or Fact Finding investigation by an appointed Fact Finder, making any determination which may result in disciplinary action for the employee, the employee shall have the right to appear, to have Union representation, to suggest witnesses to be interviewed and to submit relevant documents. If a formal hearing is conducted in addition to the above, the employee shall also be entitled to

call and question any witnesses. The employee and the Union, through the employee, shall receive a copy of any findings, and have an opportunity to rebut the findings and reports to his/her Appointing Authority, within five weekdays, before a decision is issued concerning any disciplinary action.

When a recipient rights investigation or other preliminary investigation results in a report or finding containing information detrimental to an employee's good standing, or which would constitute a basis for disciplinary action, the right to a subsequent disciplinary conference as provided by Section D. of this Article shall still apply, at which the right to Union representation shall also apply.

5. Polygraph Examinations. The Employer shall not require or attempt to persuade an employee to take a polygraph examination, lie detector test or similar test of the employee's veracity in the course of a disciplinary investigation, nor discipline or discriminate against an employee solely on the basis that the employee refused or declined to take the examination/test.
6. Disciplinary Action. It shall be the policy of the Employer to not take disciplinary action in the course of an investigation, except as provided in Section C. below.

Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee in accordance with Section D. of this Article.

Whenever an investigation does not result in disciplinary action, the finding of the investigation shall be communicated to the employee(s) under investigation in writing.

### **Section C. Investigative or Emergency Suspensions.**

1. Suspension for Investigation. The Employer may suspend an employee from duty with or without pay for investigation. A suspension for investigation without pay may be assessed against an employee when, based upon preliminary investigation, the management official responsible for administering the employee's work location forms a reasonable belief that criminal activity may be involved.

A suspension without pay shall not exceed a total of seven calendar days. In the event no disciplinary action has been taken by the end of the seven calendar day period, the Employer shall either return the employee

to active employment status, or convert the suspension to a suspension with pay (administrative leave) until the investigation is concluded and disciplinary action taken.

If a disciplinary action suspension without pay is fewer days than the suspension without pay for investigation, the employee shall be paid for the difference in the regularly scheduled hours of work, including any overtime to which the employee would have been entitled due to the observance of a contractual holiday.

If no disciplinary action is taken, the employee shall be made whole.

Nothing in this Agreement shall prohibit the Employer from taking emergency action to suspend and/or remove an employee from the work premises where, in the judgment of the Employer, such action is necessary to maintain order and discipline. Such emergency suspension/removal shall be immediately superseded by a suspension for investigation when appropriate. As soon as practical thereafter, the investigation and disciplinary conference procedures provided herein shall be undertaken and completed.

Although placed on immediate suspension, any employee directed to leave the premises immediately may, in the course of departure, consult with a Steward on the matter if one is available without unreasonable delay.

2. Suspension to Maintain Program Integrity and Public Confidence. Any employee indicted by a grand jury, or against whom a criminal charge has been brought by a prosecuting attorney for conduct on or off the job, may be immediately suspended from duty without pay. Such suspension may, at the discretion of the Appointing Authority, remain in effect until the indictment or charge has been fully disposed of by trial, quashing or dismissal. Nothing herein shall prevent an employee from grieving the reasonableness of a suspension under this Subsection, where the employee contends that the charge does not arise out of the job or is not related to the job, except that suspension for a felony charge shall not be appealable.

An employee who has been tried and convicted on the original or a reduced charge and whose conviction is not reversed, may be disciplined or dismissed upon proper notice without further charges being brought and such action shall be appealable through the grievance procedure. The record from any trial or hearing may be introduced by the Employer or the

Union in the grievance procedure, including arbitration. Under this circumstance a disciplinary conference will be conducted only upon written request of the employee. An employee whose indictment is quashed or dismissed, or who is acquitted following trial, shall be reinstated in good standing and made whole if previously suspended in connection therewith unless disciplinary charges, if not previously brought, are filed within ten weekdays of receipt of confirmation at the employee's Personnel Office of the results of the case, and appropriate action in accordance with this Article is taken concerning the employee.

Nothing provided herein shall prevent the Employer from disciplining an employee for just cause at any time irrespective of criminal actions taken against an employee and irrespective of their outcome.

Further, the Employer reserves the right to take disciplinary action against an employee who is charged with a criminal offense who, through a plea arrangement, is neither convicted nor acquitted of the original or reduced criminal charges, based on the Employer's investigation and determination that the employee's conduct violated one or more work rules.

3. The obligation to "make whole" shall not require the Employer to compensate or credit the employee for any period of time in which the employee was hospitalized, incarcerated, or otherwise not available for and seeking work, nor shall it require the Employer to compensate the employee for any non-holiday overtime the employee might have been requested or ordered to work, but for his/her suspension.

Disciplinary action, if taken by the Employer, is subject to the grievance procedure. The Union retains the right to grieve the reasonableness of any work rule pertaining to criminal conduct promulgated by the Employer.

#### **Section D. Disciplinary Conference.**

Whenever the Employer determines that disciplinary action is appropriate, a disciplinary conference shall be promptly scheduled and held with the employee pursuant to this Article.

Only upon mutual agreement between the employee and the convening management official, or in an emergency, shall a disciplinary conference be scheduled for the employee's regular day off. Subject to the same exceptions, the disciplinary conference shall be scheduled for the employee's own shift, or, in the case of a night shift employee, within one hour from the beginning or end of



the employee's shift. All disciplinary conferences shall be considered as the employee's work time. Such conferences may be postponed or rescheduled by mutual agreement between the parties. Such agreement shall not be arbitrarily withheld.

The employee may waive entitlement to such disciplinary conference; in such event no conference shall be required. The Employer is not required to postpone a disciplinary conference for an employee on extended sick leave, leave of absence, or who is incarcerated. The Employer shall advise such employee of his/her right to submit a written statement in response to the statement of charges and to have a Union Representative present at the conference to represent his/her interests.

Formal Notice of Charges and Conference. Upon receiving the written notification of the date, time and place of the disciplinary conference the employee shall be given and be requested to sign for a copy of the written statement of charges, which shall contain a description of the specific conduct or activity for which the disciplinary action is being considered. Such statement shall be subject to modification as a result of any new relevant information as may be brought forth at the disciplinary conference. Notification of the disciplinary conference shall also contain the range of possible disciplinary action and notification of the employee's right to union representation. An MCO Chapter Union Representative shall be provided a copy of the notice of disciplinary conference/statement of charges in a manner to be agreed upon locally.

Together with the statement of charges, the employee and the Chapter Representative shall also be given copies of any and all documents in the Employer's possession pertaining to the charges, and the opportunity to view any other evidence in a private location where a copy has not been provided. Sensitive image evidence shall be provided to MCO Central Office who will be responsible for maintaining its security. MCO chapter officials shall be allowed access to photocopying equipment to make a copy of the disciplinary packet to forward to MCO Central Office.

Waiver of Union Representative. At the beginning of the disciplinary conference, if the employee is not accompanied by a Union Representative, and the employee indicates s/he does not want Union representation, the employee will be requested to sign a statement indicating s/he does not wish to have a Union Representative. The Chapter Representative shall receive a copy of the signed waiver and the results of the disciplinary conference.

Questions by the employee or the Union Representative will be answered at the disciplinary conference to the fullest extent possible. Questions may be asked of any individuals present at the conference. The response of the employee to the charges, including the employee's own explanation of an incident, if not previously obtained, mitigating circumstances and the employee's response to action intended or recommended shall be received by the Employer. However, the conference shall not be for the purpose of initiating or continuing an on-going investigation. The Employer shall inform the Union of the results of the disciplinary conference.

### **Section E. Notice and Initiation of Disciplinary Action.**

Where disciplinary action has not been determined by the end of the conference, normally within ten work days thereafter, the employee and the Chapter Representative shall be notified in writing of the results of the conference, extension of the investigation requested by either of the parties, and/or the disciplinary action to be taken or recommended.

In all cases, disciplinary action, if forthcoming, shall be executed within 45 calendar days from the date of the disciplinary conference, excluding any approved leave, or absence due to workers' compensation that makes the employee unavailable on the 45th or subsequent contiguous day(s), or any agreed upon extension. If the penalty is not executed within this time frame there will be no disciplinary action taken against the employee nor reference made to the matter in his/her personnel file.

Formal notification to the employee of disciplinary action shall be in writing and shall spell out the charges and reasonable specifications. Where such notice involves loss of pay, it shall also advise the employee of the right to appeal. If presented to the employee personally, the employee shall sign for his/her copy; otherwise, the notice shall be sent to the employee by certified mail, return receipt requested, or other verifiable mail service, at the last address he/she provided the Employer.

Upon notification to the employee that a disciplinary suspension will be assessed, the employee may exercise either of the following options in lieu of serving the suspension time, or to offset the imposition of discipline for a suspension without pay for investigation:

1. Pay a fine consisting of 85% of the employee's hourly wages for the number of hours of the assessed disciplinary action. Fines will be made as a negative pay adjustment prior to taxes if permitted by IRS Regulations. As necessary, the Employer will distribute such fines across pay periods in order to comply with Fair Labor Standards Act requirements.

2. Forfeit accrued annual or compensatory time credits at a rate of one hour for each hour of the assessed disciplinary action.

Hours for either option above will be based on an eight-hour day for the number of days of the assessed suspension, and the employee shall have until the end of the next business day to select one of these options. Such time will not count toward the 45-day time limit for assessing disciplinary action.

The director of a department or his/her designee within the central or regional office may deny the request of an employee to exercise one of the above disciplinary options in unusual circumstances such as situations involving public notoriety or impact beyond the department.

#### **Section F. Resignation in Lieu of Disciplinary Action.**

When a decision is made to permit an employee to resign in lieu of dismissal, the employee must submit a resignation in writing. Such written resignation shall be held for 24 hours or eight business office hours, whichever is greater, after which it shall become final and effective as of the time when originally submitted, unless retracted during the 24-hour period. This provision applies only when a resignation is accepted in lieu of dismissal and the employee has been advised he/she will be dismissed in the absence of the resignation. Acceptance of such resignation in lieu of dismissal shall be at the sole discretion of the Employer and, when accepted, the resignation and matters related thereto shall not be grievable.

#### **Section G. Outside Investigations.**

The parties recognize that the conduct of employees may, at times, be the subject of investigations by outside agencies. It is not the parties' intent to hinder any ongoing investigation; however, the parties mutually agree that these types of investigations should be conducted discretely, and where possible and practical, off the Employer's property and outside the employee's normal working hours.